In the High Court of Judicature at Madras

Dated:17.10.2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Petition No.20832 of 2002

and WPMP.No.28822/02 & WVMP.No.1802/02

1. The Director of Elementary
   Education, Chennai 6.

2. The District Elementary
   Educational Officer,
   Villupuram 605 602. .. Petitioners

vs.

1. P.N. Thiruvengadam

2. The Registrar
   Tamil Nadu Administrative Tribunal
   Chennai 104. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records relating to the order dated 17.08.2001 of the Honourable Tamilnadu Administrative Tribunal, Chennai, the 2nd Respondent herein made in OA.No.3617/2000 and quash the same as stated therein.

For petitioners : Mr. E. Sampath Kumar
Government Advocate
For respondents : Mr. S. Vadivelu for R.1

WEB COPY

ORDER

(Order of the Court was made by P. SATHASIVAM,J.,)

Aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai dated 17.08.2001, made in O.A.No.3617 of 2000, the Director of Elementary Education, Chennai-6 and the District

https://hcservices.ecourts.gov.in/hcservices/

Elementary Educational Officer, Villupuram, have preferred the above writ petition.

2. According to the petitioners, the first respondent herein worked as Headmaster in the Panchayat Union Elementary School, Agoor, Mayilam Panchayat Union. A charge memo was issued on 15.04.1999, calling upon him to submit his explanation for marrying second and third wives, while the first wife is alive. On 11.06.1999, the first respondent submitted his explanation. Thereafter, an enquiry was ordered to be held by framing charges. Charge memo was issued to the first respondent on 17.08.1999, for violation of Tamil Nadu Government Servents' Conduct Rules, as he married two women while the first wife is alive. The first respondent acknowledged the receipt of the charge memo on 06.09.1999 and requested further time for giving his explanation on 08.08.1999. He made further request to furnish copies of documents pertaining to the charges leveled against him. On 04.10.1999, he was permitted to peruse the documents. On 08.10.1999, he perused the documents and received copies of the same. On 22.10.1999, orders were issued holding that the charges were proved and he was removed from service. The first respondent filed O.A.No.6552 of 1999 before the Tamil Nadu Administrative Tribunal challenging the said order dated 21.10.1999, dismissing him from service. Consequent to the interim order, first respondent was reinstated on 18.11.1999. In the meantime, he attained superannuation on 30.11.1999. By order dated 03.01.2000 made in O.A.No.6552 of 1999, the Tribunal, allowed his application holding that the admission of the applicant prior to the issue of charge memo cannot be put against him. However, the Tribunal permitted the Department to proceed with the charge memo afresh. On 28.04.2000, charge memo was reissued for conducting enquiry. The first respondent acknowledged the charge memo on 15.05.2000. Again, he requested further time for submitting his explanation. He once again approached the Tribunal by filing O.A.No.3617 of 2000. By the impugned order dated 17.08.2001, the Tribunal set aside the charge memo dated 28.04.2000 and observed that the first respondent shall be deemed to have retire from service on 30.11.1999, on attaining the age of superannuation. The Tribunal, also directed that the first respondent shall be paid all the retirement benefits within a period of three months. Questioning the same, the present writ petition has been filed.

3. Heard the learned Government Advocate for the petitioners and the learned counsel for first respondent.

4. In the light of the limited issue, it is unnecessary to traverse all the points raised. It is not in dispute that by order dated 03.01.2000 made in O.A.No.6552 of 1999, the Tribunal, after finding that the statement made in the letter dated

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11.06.1999 is not an admission, set aside the order of dismissal and allowed the said application. However, in the same order, the Tribunal permitted the Department to proceed afresh, if they have the jurisdiction and authority to do so. The said order further discloses that even on 30.11.1999, the applicant reached the age of superannuation and he was not in service from 30.11.1999. In spite of the said factual position, as rightly pointed out by the learned counsel for the first respondent, the Department issued the very same charge memo, based on the observation made by the Tribunal in the order dated 03.01.2000. The said action was challenged by the first respondent herein in O.A.No.3617 of 2000. By the present impugned order, the Tribunal, after referring the earlier order of the Tribunal dated 03.01.2000, viz., that after the said order, the dismissal order become non-existent and in the absence of any pecuniary loss to the Government, quashed the order dated 28.04.2000. The Tribunal has also observed that in view of the said conclusion the applicant shall be treated as if he retired from service on attaining the age of superannuation on 30.11.1999. In such a circumstance, he shall be paid all retirement benefits.

5. Though in the earlier order dated 03.01.2000, the Tribunal has permitted the Department to proceed afresh, the fact remains, the very same charge memo was reissued, by that time the applicant attained superannuation. In such a circumstance, as rightly pointed out, the Department is not justified in pursuing the very same charge memo even after his retirement. The procedure followed by the Department is contrary to the Rule as observed in the case of State of Tamil Nadu Vs. R.Karuppiah reported in 2005 (3) CTC 4. Hence, we are in agreement with the conclusion arrived at by the Tribunal and unable to appreciate the contra argument made by the learned Government Advocate. Accordingly, we do not find any error or infirmity in the order impugned. Consequently, the writ petition fails and the same is dismissed. No costs. Connected miscellaneous petitions are also dismissed.

kh

Sd/
Asst.Registrar

WEB COPY

/true copy/

Sub Asst.Registrar

https://hcservices.ecourts.gov.in/hcservices/

To

The Registrar,
Tamilnadu Administrative Tribunal,'
Chennai-104.

1 cc To The Government Pleader SR 41858.
1 cc To Mr.S.Vadivelu, Advocate SR 41844.

Order in
W.P.No.20832 of 2002

BK(CO)
RVL 20.10.05

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/